

Water Policy Technical Advisory Committee
Minutes of Meeting of April 28, 2003
8:30 AM - 4:00 PM

Attendance:

Water Policy Technical Advisory Committee Members:

C. Michael Thacker	Ward Staubitz
Shelton Miles	Robert H. Conner
Frank Sanders	Michael West
Thomas Botkins	Arthur D. Petrini
Jerry Higgins	David Paylor
Christopher Pomeroy (for Guy Aydtlett)	Eldon James
Robert Taylor	Patti Jackson
Cathy Taylor	Nikki Rovner (for Judy Dunscomb)
Sam Hamilton	Robert W. Royall
Charlie Crowder	Jeffery C. Irving
Brian Ramaley	Dan Kavanaugh
Terry Reid	Chris Miller
Bob Burnley	Josh Rubinstein
Wilmer Stoneman	

Members Absent:

Ed Imhoff	Jesse Richardson
Bill Cox	

DEQ and Facilitation staff:

Scott Kudlas	Barbara Hulburt
Terry Wagner	Mark Rubin
Joe Hassell	Bill Ellis
Kathy Frahm	

Division of Legislative Services Staff:

Marty Farber

Interested Parties:

Larry Land	Becky Mitchell
John Lain	Craig Ziesemer
Wyatt Little	John M. Carlock (alternate)
Kristen Lenz (alternate)	Roy A. Jackson
Chris Whyte	Tom Gray (alternate)
Brent Waters	Alisia Penn
Chuck DuVall	Clayton Walton
Denise Thompson	Tom Roberts (alternate)
Thomas Leahy	

Summary of the Meeting:

Deputy Secretary Paylor opened the meeting by welcoming the members of the TAC and thanking them for their participation. He expressed his hope that the many diverse interests represented on the TAC would be ably represented but that all would work together for the common good.

The members of the McCammon Group facilitation team, Barbara Hulburt, Bill Ellis and Mark Rubin then introduced themselves to the members of the TAC.

The mission of the TAC as set forth in the DEQ report of January, 2003, to the Governor and the General Assembly was stated as follows:

To identify the roles and responsibilities of state and local governments to assure groundwater and surface water resources are used in a sustainable way that protects the environmental resources and meets citizen water needs (agricultural, business and residential) now and in the future.

The members of the TAC introduced themselves, the groups they represented and their expectations for the TAC meetings. A condensed and summarized sense of these expectations is as follows:

1. A holistic approach to water resources in which all uses, both in-stream and off-stream, are evaluated equally and fairly.
2. A framework (principles and criteria) that would provide a cohesive plan at the state level setting out the state's role including the role of advocacy. The framework would build upon existing local and regional planning efforts. Further, it would encourage long term planning by the state, regions and local governments to provide a stable, predictable and sustainable water supply.
3. A balanced plan that ensures an adequate supply of and access to safe drinking water as well as one that protects and preserves water resources.
4. A recognition and appreciation of existing uses and rights to water.
5. A gathering of data and information to promote development and implementation of a feasible, economical and doable plan.
6. A step forward in water planning for the Commonwealth that brings together many years of work and provides a better means of planning than currently exists.

The TAC then discussed the charge of the TAC and the role of DEQ. The charge originates from Senate Bill 1221 passed in the 2003 session of the General Assembly. It contemplates two end products.

The first product is a preliminary water resources plan. DEQ would compile current local and regional plans as well as review and inventory current state monitoring efforts and procedures. This preliminary plan would seek to answer the questions of where is the Commonwealth now in regard to planning, where are the "holes" in the current processes and where does the Commonwealth need to be. While most of the work in drafting this preliminary plan will be the administrative task of DEQ, the TAC's role will be to identify issues to be considered and to receive and provide information to create this preliminary plan.

The second product is a draft regulation. The draft regulation would provide a framework (principles and criteria) and components for local and regional plans. The differences between various localities require that the draft regulation be flexible. It would involve state, local and regional roles in the planning process as well as evaluation criteria for the protection of resources. The TAC's role is to identify and seek consensus on significant policy issues that would inform a regulation and then to produce a draft regulation.

The TAC also engaged in a discussion of the meaning of "consensus" for the purpose of its work. The goal is to arrive at consensus products to meet the charge of the TAC. DEQ is committed to carrying a consensus work product forward if consensus can be reached. However, it is also clear that DEQ is charged with providing a draft regulation to the General Assembly even if consensus is not reached. It was clearly stated that presenting products derived through consensus was very much worth the effort it would take to do so.

Consensus was defined as a willingness of each member of the TAC to be able to say that he or she **can live with** the decisions reached and that he or she will not work against those decisions at higher levels of authority. Discussion was also had on the point that if all members of the TAC could not live with a particular decision then there would be no consensus on that point.

In order to reach consensus, it is important that all parties participate in good faith. Concerns were raised about previous efforts to carry the consensus product reached last year forward into the legislative process. The concept is to carry the spirit of consensus forward in the face of not only potential opposition to the product of the TAC but also efforts to amend the consensus product. Good faith participation also includes transparency in the process. If a member feels that a particular point is a “deal breaker”, it is incumbent that the TAC be so informed. The TAC understood that if an issue is not raised within the TAC, it cannot be addressed and efforts made to meet the interest to achieve consensus.

The role of each TAC member as a representative of a specific group or interest was raised. Assistance was offered to insure that each TAC member kept his or her group well informed and further that the group’s collective voice could be heard clearly by the TAC. In order to reach a consensus work product, each representative must be able to accurately reflect his or her group’s final view of that product. Concerns were raised about the ability of some members to obtain consensus within the groups that they represent particularly for those who represent regional bodies or groups of local governments. The commitment is for members of the TAC to agree to do all they can to bring their groups along with the consensus and to be transparent about those constituent voices that are not a part of the consensus.

After much discussion, the following commitment to the TAC was *assented* to by the TAC members: “We can agree that if we say that we will live with it, we will work toward its adoption and not undermine it.” The TAC also discussed the importance of having clarity about which issues the group had agreed upon. The sense of the group was that consensus will be clearly stated and agreement expressly obtained before commitment to a consensus is deemed to have been reached.

The limits of the TAC’s authority were also fully discussed. The members of the TAC recognized that it is an advisory body and does not have final decision making authority. The State Water Control Board, the Administration and the General Assembly all have a great deal to say about the ultimate plan and regulation. In addition, any regulation that is drafted must pass through the Administrative Procedure Act processes. At the same time, the members recognized the power that the results obtained by presenting consensus-based products to the General Assembly reached by the diverse interests on the TAC would have in its consideration at higher levels of authority.

The TAC then focused its attention on identifying the policy issues to be considered as a prelude to arriving at a draft regulation. In addition, the group discussed dividing into three smaller working groups and means to organize its work. The issues identified were as follows:

Technical Issues:

1. Need to evaluate alternative sources to meet needs with least impact
2. Need to address gaps in our groundwater data collection network
3. Need to address gaps in our surface water data collection network
4. Need to address gaps in our precipitation data collection network
5. Need to address gaps in our understanding of the nature of all water use in the state, not just drinking water
6. Need to obtain data regarding the relative costs of differing water treatment approaches
7. Need to identify regional differences in the availability of all relevant data
8. Need to address what methodology and what planning timeframe should be used for demand projections
9. Need to identify appropriate in-stream flows and a means to provide for in-stream and off-stream uses

10. Need to protect water use by existing water users
11. Need to understand and promote the multiple benefits of water development projects
12. Need to improve our definition of safe yield
13. Need to identify future threats to water resources and supplies
14. Need to protect water sources from...
15. Need to protect public health

Management:

1. Need for a set of principles to use in planning for and siting new water supplies
2. Need to determine what tools will promote regionalization of supplies
3. Need to ensure efficient use of water resources and implementation of conservation measures, including demand management and water re-use for non-potable purposes
4. Need for water suppliers and users to plan for drought
5. Need to establish a mechanism to recognize implementation of these tasks
6. Need to understand and promote the multiple benefits of water development projects
7. Need to define the appropriate planning (unit) area of analysis for this work
8. Need to identify future threats to water resources and supplies
9. Need to protect water sources from...
10. Need to protect public health
11. Need to address identification, protection, conservation and development of future resources

Legal

1. Need to address the concept of inter-basin transfers
2. Need to protect water use by existing water users
3. Need to minimize any impact on the existing groundwater and riparian rights of landowners
4. Need to protect public health

The TAC discussed several different ways to divide the issues for work in smaller working groups. Suggestions included divisions along the lines of technical, management and legal. Another suggestion was to narrow the list of issues by providing some information to the group on the current status of the law and data gathering and to have each working group concentrate on all of the remaining issues for decision making purposes. The full group would then discuss the results of the work of the smaller groups.

The facilitators and DEQ agreed to work on a proposed framework for these discussions and to circulate it among the TAC members. Work would also be done to constitute the working groups. Dates for the next full meeting of the TAC and working group meeting dates would also be determined by polling the membership. In that regard, a proposed time line for the remainder of the work was also presented.

A concern was also noted that some members would appreciate being reimbursed for their lodging and travel expenses associated with the work of the TAC. While DEQ greatly appreciates the sacrifices many members are making to attend and work on the TAC, it is unable to reimburse these expenses but is able to provide lunch at the meetings.

The facilitators expressed their appreciation and gratitude for the work of the TAC at this meeting and noted the initial progress that had been made. Any questions or concerns about the topics discussed at this meeting will be discussed at the next meeting. The meeting was adjourned.

Minutes submitted by Mark Rubin